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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,636

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Robert James Gerndt

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EXAMINER

BROWN II, DAVID N

ART UNIT

PAPER NUMBER

4111

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/525,636	Applicant(s) GERNDT ET AL.	
	Examiner DAVID N. BROWN II	Art Unit 4111	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
 4a) Of the above claim(s) 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-25-06 5-30-06</u> | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Applicant's election without traverse of claims 1-12 in the reply filed on 24 February, 2005 is acknowledged.

Information Disclosure Statement

2. The references cited by Applicant on the 1449's have been made of record.

While the statements filed clearly do not comply with the guidelines set forth in MPEP 2004 regarding both the number of references cited and elimination of clearly irrelevant art and marginally pertinent cumulative information, compliance with these guidelines is not mandatory. Furthermore, 37 CFR 1.97 and 1.98 do not require that the information be material, rather they allow for submission of information regardless of its pertinence to the claimed invention. Also, there is no requirement to explain the materiality of submitted references, however, the cloaking of a clearly relevant reference by inclusion in a long list of citations may not comply with Applicant's duty of disclosure, see *Penn Yan Boats, Inc. v. Sea Lark Boats Inc.*, 359 F. Supp. 948, aff'd 479 F. 2d. 1338.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "said support surface". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,143,679 (Weber).

US Patent 5,143,679 (Weber) teaches in figures 2 and 2a: "FIG. 2 is a simplified perspective view of a sequential web stretching assembly of the present invention, said assembly being comprised of two sequentially positioned sets of meshing corrugated rolls (25 and 27). FIG. 2A is a simplified view taken along view line 2A--2A in FIG. 2 and showing the manner in which idler rolls (72 and 74) are used to cause the diaper web to wrap corrugated rolls. Shown here in the figure is part of the sheet material (1). Roll (21) is taken to be the grooved forming surface according to applicant claims. The rolls are grooved (or corrugated) is taught in column 14 lines 32-36. Weber continues: (column 17 line 42): "...as they pass between the meshing portions of the continuous grooves 23 on lowermost corrugated rolls 21 and the grooved segments 24a and 24b of the first and second sets of uppermost corrugated rolls 25 and 27, respectively."

Claim 2:

Column 14 lines 60-64 teach that the rolls are adjusted so that the degree of overlap increases from the first pair to the second pair. This inherently produces a different amount of stretch

Claim 3:

The arrangement of the forming surface and the satellite rolls can be seen in figure 2A as previously described.

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Claims 5, 6, and 7:

Beginning in column 10 line 68 and ending in column 11 line 5, the elements that compose Fig 2E are disclosed as a film and a non-woven fibrous material.

Claim 8:

It is assumed that stretching is performed in the machine direction due to the orientation of the grooved (corrugated) rollers (25 and 27).

Claim 10:

Column 14 lines 48-50 describe the rolls having a pitch of 0.150 inches. This corresponds to about 6.7 teeth per inch. This value is within the range claimed by applicant.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,143,679 (Weber) as applied to claim 1 above in view of US 6,368,444 (Jameson).

Not taught in the Weber patent is that the forming surface comprises a belt. Demonstrated in figure 15 of the Jameson patent is sheet material (50) being stretched between the nip of two continuous belts (78) (column 12 lines 55-57). The Jameson patent demonstrates that either a drum shaped forming surface or endless belts can be used in order to perform the stretching. It would have been obvious to one having ordinary skill in the art at the time of the invention to replace the drum-shaped forming surface of Weber with the continuous belt found in Jameson motivated by the fact that the two designs are art recognized equivalents.

10. Claims 8, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable US 5,143,679 (Weber) as applied to claim 1 above, and further in view of US 2002/0062574 (Volpenhein).

The Weber method indicates stretching in only one direction. Weber is silent as to which direction stretching is performed; however, it is assumed that stretching is performed in the machine direction due to the orientation of the grooved (corrugated) rollers. Nevertheless, not taught by Weber is stretching in both directions. The Volpenhein patent is also drawn to stretching a non-woven or laminate material. Paragraph [0042] of the Volpenhein patent demonstrates that stretching is performed in both directions. Figures 14 and 15 provide evidence that knowledge of CD and MD stretching were available to one having ordinary skill in the art at the time of the

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invention. As evidenced by these figures, one having ordinary skill in the art would know to adjust the stretching direction by adjusting the direction of the grooves with respect to the web movement direction. It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate an additional cross-machine, or an additional machine direction stretching section in the apparatus of Weber as was done by Volpenhein motivated by a desire to stretch in both directions.

With regard to applicant claim 11:

Weber makes no mention of the weight ranges for the material used in the apparatus. Paragraph [0117] of the Volpenhein patent teaches that the web can weigh from 10 to 60 gsm. It would have been obvious to one having ordinary skill in the art at the time of the invention to use this material in the Weber apparatus motivated by a reasonable expectation of success.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,143,679 (Weber) as applied to claim 1 above, and further in view of US Patent 6,332,955 (Meschenmoser).

12. The path taken by the web in the Weber patent does not include a place where the web is separated from a surface and then returns to that same surface. In figure 1 of the Meschenmoser patent, the web (part 10) is seen to pass through the nips (S1, and S2) on the same forming surface (20). Both patents are drawn to treating fibrous webs. It would have been obvious to one having ordinary skill in the art at the time of the invention to route the web such that it passes the same surface more than once motivated by the desire to create a more compact machine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID N. BROWN II whose telephone number is (571)270-5497. The examiner can normally be reached on Monday-Thursday 7:30a-5:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on (571)-272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID N. BROWN II/
Examiner, Art Unit 4111

/Sam Chuan C. Yao/
Supervisory Patent Examiner, Art Unit 4111